UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

INDEPENDENCE RESIDENCES, INC.,

Respondent,

and

Case No. 29-CA-30566

WORKERS UNITED, SERVICE EMPLOYEES INTERNATIONAL UNION,

Charging Party.

RESPONDENT INDEPENDENCE RESIDENCES, INC.'S EXCEPTIONS TO THE DECISION AND ORDER OF THE ADMINISTRATIVE LAW JUDGE

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EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGE'S DECISION

Pursuant to Section 102.46 of the Rules and Regulations of the National Labor Relations Board ("NLRB" or "Board"), Respondent Independence Residences, Inc. ("IRI" or the "Company") excepts to the following factual findings, legal conclusions, remedies, and orders contained in the August 24, 2011 decision of the Administrative Law Judge ("ALJ"):

1. The ALJ's finding of fact that the Union of Needletrades Industrial and Textile Employees ("UNITE!") filed a representation petition on April 24, 2004. (ALJ Decision, p. 2, lines 27-29). This was apparently a typographical error – the representation petition was filed by UNITE! on April 24, 2003.

2. The ALJ's restatement of the determination that he made in his June 7, 2004 recommended decision on IRI's election objections that IRI "had not established that its campaign was substantially inhibited by the existence of" New York Labor Law Section 211-a ("NYLL § 211-a"), that IRI "conducted a vigorous and aggressive anti-union campaign," and that IRI "had not met its burden of proving that [NYLL § 211-a] had an objectionable impact on the free choice of employees in the election." (ALJ Decision, p. 4, lines 20-25). (See Point Three of IRI's Brief in Support of its Exceptions for an explanation of why this determination was erroneous).

3. The ALJ's finding of fact that "[t]he record is not entirely clear as to precisely which entity of UNITE!, the individuals, who organized Respondent's employees, belonged." (ALJ Decision, p. 8, lines 13-14). The record clearly established that the individuals who organized IRI's employees in 2003 represented themselves to IRI's employees as being part of UNITE!'s Disability Services Council

("DSC") and all of the campaign materials disseminated by UNITE! identified the organizers as being part of the DSC. (R-1-4, 5(a)-(c), 6, 7; Tr. 107:14, 170:2-10).

4. The ALJ's finding that IRI's estimate of the current number of employees covered by the proposed bargaining unit description was inflated. (ALJ Decision, p. 21, lines 24-30). Cliff Emmerich's testimony on direct examination that there are currently approximately 234 employees covered by the proposed bargaining unit description was not rebutted by any other witnesses, nor was it inconsistent with any of his testimony on cross-examination. (Tr. 195-200).

5. The ALJ's legal conclusion that IRI "has fallen far short of meeting its burden of establishing that the changes resulting from the merger of UNITE! into UNITE HERE! and the subsequent disaffiliation from UNITE HERE! resulting in the formation of Workers United were 'sufficiently dramatic to alter the identity of the union and the substitution of an entirely different union as the employees' representative.'" (ALJ Decision, p. 22, lines 38-42). (See Point One of IRI's Brief in Support of its Exceptions for an explanation of why this legal conclusion was erroneous).

6. The ALJ's legal conclusion that "Workers United is virtually the same labor organization as UNITE!, despite the merger with UNITE HERE! and subsequent disaffiliation from UNITE HERE! by most of UNITE!'s joint boards." (ALJ Decision, p. 22, lines 46-48). (See Point One of IRI's Brief in Support of its Exceptions for an explanation of why this legal conclusion was erroneous).

7. The ALJ's legal conclusion that "the factor of continuity of leadership, here, strongly supports a finding of continuity." (ALJ Decision, p. 23, lines 41-42). It is undisputed that the UNITE! Joint Board that was responsible for organizing

IRI's employees elected to remain affiliated with UNITE HERE!, and that the UNITE! officials who led the organizing campaign are not employed by Workers United. (Tr. 73:2-4, 101:8-17, 106:15-16, 189:16-19, 105:8-12). (See Point One of IRI's Brief in Support of its Exceptions for a further explanation of why this legal conclusion was erroneous).

8. The ALJ's legal conclusion that "there was no confusion here concerning the representative of Respondent's employees, and there was no attempt to transfer representational responsibilities and that Respondent had no right to refuse to recognize and bargain with Workers United." (ALJ Decision, p. 25, lines 16-19). (See Point One, Section B, Paragraph 1 of IRI's Brief in Support of its Exceptions for an explanation of why this legal conclusion was erroneous).

9. The ALJ's determination that IRI bore the burden of proof regarding lack of continuity of representation between UNITE! and Workers United, rather than determining that the General Counsel bore the burden of proof that Workers United is the representative of IRI's employees under Section 9(a) of the National Labor Relations Act ("NLRA" or the "Act"). (See Point One, Section B, Paragraph 1 of IRI's Brief in Support of its Exceptions for an explanation of why this determination was erroneous).

10. The ALJ's legal conclusion that "the absence of any Workers United officials with experience in representing MRDD shops, or, indeed, any evidence that any entity affiliated with Workers United represented MRDD facilities" is insufficient to establish a substitution of an entirely different union as employees' representative. (ALJ Decision, p. 28, lines 30-34). (See Point One, Section B, Paragraph 2 of IRI's

Brief in Support of its Exceptions for an explanation of why this legal conclusion was erroneous).

11. The ALJ's determination that Workers United's affiliation with the Service Employees International Union ("SEIU") is relevant to the issue of whether Workers United is the successor of UNITE! for purposes of representation of IRI's employees. (ALJ Decision, p. 28, lines 36-41). (See Point One, Section B, Paragraph 2 of IRI's Brief in Support of its Exceptions for an explanation of why this determination was erroneous).

12. The ALJ's reliance on SEIU and employer web sites that were not placed into evidence during the hearing to support his irrelevant conclusion that SEIU has experience in representing employees in the MRDD industry. (ALJ Decision, p. 29, lines 5-38). (See Point One, Section B, Paragraph 2 of IRI's Brief in Support of its Exceptions for an explanation of why the ALJ's reliance on SEIU and employer web sites was erroneous).

13. The ALJ's legal conclusion that the changes in the composition of the bargaining unit in the more than seven years between the election and the certification were irrelevant to the issue of whether a bargaining order should be imposed. (ALJ Decision, p. 30, lines 29-38; ALJ Decision, p. 32, lines 14-15). (See Point Two of IRI's Brief in Support of its Exceptions for an explanation of why this legal conclusion was erroneous).

14. The ALJ's legal conclusion that Workers United is the successor of UNITE! and is the exclusive collective bargaining representative of a collective bargaining unit of IRI's employees. (ALJ Decision, p. 32, line 30 to p. 33, line 11). (See

Point One of IRI's Brief in Support of its Exceptions for an explanation of why this legal conclusion was erroneous).

15. The ALJ's legal conclusion that IRI engaged in unfair labor practices in violation of Sections 8(a)(1) and 8(a)(5) of the Act by refusing to recognize and bargain with Workers United and by refusing to supply relevant information to Workers United. (ALJ Decision, p. 33, lines 13-16). (See IRI's Brief in Support of its Exceptions for an explanation of why this legal conclusion was erroneous).

16. The ALJ's entire remedy. (ALJ Decision, p. 33, lines 21-35). (See IRI's Brief in Support of its Exceptions for an explanation of why the ALJ's remedy was erroneous).

17. The ALJ's entire order. (ALJ Decision, p. 33, line 37 to p. 35, line 11). (See IRI's Brief in Support of its Exceptions for an explanation of why the ALJ's order was erroneous).

Dated: September 21, 2011

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CERTIFICATE OF SERVICE

I, Subhash Viswanathan, certify that I served the foregoing Respondent's Exceptions to the Decision and Order of the Administrative Law Judge on Emily Cabrera, counsel for the Acting General Counsel, and Ira Jay Katz, counsel for the Charging Party, by electronic mail on September 21, 2011.

Dated: September 21, 2011

/s/ Subhash Viswanathan
Subhash Viswanathan